

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR 16-0462 JB

DANIEL V. OLGUIN,

Defendant.

MEMORANDUM OPINION AND ORDER

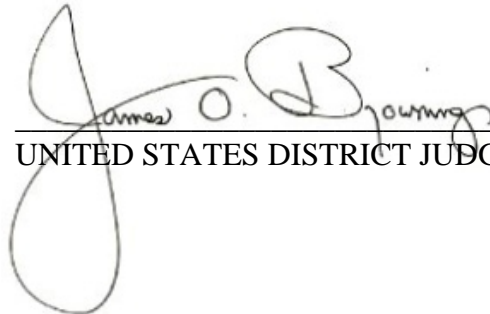
THIS MATTER comes before the Court on the Letter of David Olguin to the Court, (undated), filed November 2, 2017 (Doc. 38)(“Olguin Letter”). Defendant David Olguin asks for a copy of his Judgment. See Olguin Letter at 1. According to Olguin, the Court determined that his sentence should run concurrently to any state sentence. See Olguin Letter at 1. Olguin requests a copy of his Judgment reflecting that determination. See Olguin Letter at 1.

The Court attaches four documents: (i) the Judgment, filed September 16, 2016 (Doc. 37); (ii) the letter of Michael V. Davis (Olguin’s apparent counsel) to the Court (dated January 11, 2018), filed January 19, 2018 (Doc. 40); (iii) the Sentencing Minute Sheet, filed August 12, 2016 (Doc. 36); and (iv) the Sentencing Transcript (taken August 12, 2016), filed January 19, 2018 (Doc. 39). There was only one sentencing hearing.

Olguin is mistaken. The Court did not order his federal sentence to run concurrently to any state sentence. See Sentencing Transcript at 17:11-19:4. Moreover, no one requested that the sentences run concurrently. Perhaps Olguin will be satisfied when he reviews the Sentencing Transcript.

IT IS ORDERED that the requests in the Letter from David Olguin to the Court

(undated), filed November 2, 2017 (Doc. 38), are granted in part, and denied in part. Defendant David Olguin's request for the Judgment, filed September 28, 2016 (Doc. 37), is granted. All other requests for relief are denied.



UNITED STATES DISTRICT JUDGE

Counsel:

James D. Tierney
Acting United States Attorney
Niki Tapia-Brito
Assistant United States Attorney
Albuquerque, New Mexico

Attorneys for the Plaintiff

Michael V. Davis
Michael V. Davis, Attorney & Counselor at Law, P.C.
Corrales, New Mexico

Attorney for the Defendant

David V. Olguin
United States Penitentiary Tucson
Tucson, Arizona

Pro se

UNITED STATES DISTRICT COURT, DISTRICT OF NEW MEXICO
SENTENCING MINUTE SHEET

CR No.	16-462 JB	USA v.	Olguin		
Date:	8/12/16	Name of Deft:	Daniel V. Olguin		
Before the Honorable		James O. Browning			
Time In/Out:	9:50 a.m./10:26 a.m.		Total Time in Court:	:36	
Clerk:	K. Wild		Court Reporter:	M. Seal	
AUSA:	Niki Tapia-Brito		Defendant's Counsel:	Michael Davis (Appointed)	
Sentencing in:	ABQ		Interpreter:	N/A	
Probation Officer:	Sandra Day		Sworn?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Convicted on:	<input checked="" type="checkbox"/> Plea	<input type="checkbox"/> Verdict	As to:	<input type="checkbox"/> Information	<input checked="" type="checkbox"/> Indictment
Plea:	<input type="checkbox"/> Accepted	<input type="checkbox"/> Not Accepted	Adjudged/Found Guilty on Counts:	Count 1	
Plea Agreement:	<input checked="" type="checkbox"/> Accepted	<input type="checkbox"/> Not Accepted	No Plea Agreement	Comments:	
Date of Plea:	April 1, 2016		PSR:	<input type="checkbox"/> Not Disputed	<input checked="" type="checkbox"/> Disputed
PSR:	<input checked="" type="checkbox"/> Court Reviewed PSR Factual Findings and USSG Calculations and Adopts as Its Own	Evidentiary Hearing:	<input checked="" type="checkbox"/> Not Needed	<input type="checkbox"/> Needed	
Exceptions to PSR:	see below				
SENTENCE IMPOSED		Imprisonment (BOP): 37 months			
Supervised Release:	3 years		Probation:		500-Hour Drug Program
SPECIAL CONDITIONS OF SUPERVISION					
<input type="checkbox"/>	No re-entry without legal authorization		<input type="checkbox"/>	Home confinement for _____ months _____ days	
<input type="checkbox"/>	Comply with ICE laws and regulations		<input type="checkbox"/>	Community service for _____ months _____ days	
<input type="checkbox"/>	ICE to begin removal immediately or during sentence		<input checked="" type="checkbox"/>	Reside halfway house 6 months	
<input checked="" type="checkbox"/>	Participate in outpatient substance abuse program		<input type="checkbox"/>	Register as sex offender	
<input checked="" type="checkbox"/>	Participate in outpatient mental health program		<input type="checkbox"/>	Participate in sex offender treatment program	
<input checked="" type="checkbox"/>	No alcohol or other forms of intoxicants		<input type="checkbox"/>	Possess no sexual material	
<input checked="" type="checkbox"/>	Submit to search of person/property		<input type="checkbox"/>	No computer with access to online services	
<input type="checkbox"/>	No contact with victim(s) and/or co-Deft(s)		<input type="checkbox"/>	No contact with children under 18 years	
<input type="checkbox"/>	No entering, or loitering near, victim's		<input type="checkbox"/>	No volunteering where children supervised	
<input type="checkbox"/>	Provide financial information		<input type="checkbox"/>	Restricted from occupation with access to	
<input type="checkbox"/>	Grant limited waiver of confidentiality		<input type="checkbox"/>	No loitering within 100 feet of school yards	
<input checked="" type="checkbox"/>	OTHER: --The Defendant must refrain from the use and possession of synthetic cannabinoids, commonly referred to as spice, or synthetic cathinones, commonly referred to as bath salts. --The Defendant must not possess a firearm, ammunition, destructive device, or any other dangerous weapon. --The Defendant must participate in and successfully complete a community-based program which provides education and training in parenting. --The Defendant must not have any unwanted direct or indirect contact or communication with the				

victim, or go near or enter the premises where the victim resides, is employed, attends school or treatment, without the victim's consent.					
Fine: \$	0.00		Restitution: \$	The Court finds the Mandatory Restitution Act of 1996 is applicable in this case. However, restitution has not yet been determined. Therefore, restitution will not be imposed.	
SPA: \$	100.00		Payment Schedule:	X	Due Immediately Waived
OTHER:					
X	Advised of Right to Appeal	X	Waived Appeal Rights per Plea Agreement		
X	Held in Custody		Voluntary Surrender		
X	Recommended place(s) of incarceration:	The Court recommends FCI Safford, AZ, if eligible.			
X	Dismissed Counts:	Upon Court's inquiry, AUSA orally moves to dismiss Count 2 and represents will submit written motion and proposed form of order re: same at later time; Court grants.			
OTHER COMMENTS		As to objections, seems since victim is not present to testify as to veracity of use of knife, inclined to sustain. AUSA has no argument re: same - informs did subpoena one of the officers, but he is not present at this time, but do not need to wait to see if he arrives. Court notes with that change OL is now 18/CHC IV/41-51 months. As to para. 27, defense counsel requests second sentence be stricken up until the semi-colon; AUSA does not oppose; Court orders PSR revised re: same. Upon Court's inquiry, AUSA orally moves for third level reduction based on acceptance and represents will submit written motion and proposed form of order re: same at later time; Court grants. Defense counsel addresses Court to include downward variance outlined in 11(c)(1)(C) agreement. Defendant allocutes. Court asks Defendant if he has any assets? Defendant represents he does not. AUSA addresses Court to include argument in support of downward variance outlined in 11(c)(1)(C) agreement. Court accepts plea agreement. Defense counsel requests recommendation to FCI Safford, AZ; USPO informs appropriate; Court recommends same. Defense counsel requests that as to condition no. 8 - re: no contact with victim, that the Court consider they have children together - does victim need to contact USPO to let Court know she is okay with contact? Court suggests could modify to prevent "unwanted" contact, but that could be subject to dispute; defense counsel amenable to said change - suggests if problem can be addresses w/USPO; AUSA amenable to modifying as Court has suggested - informs victim has been provided w/USPO's contact information; Court concerned sentence does not make sense with change - revises as reflected above; counsel and USPO fine with change. Upon Court's inquiry, AUSA orally moves to dismiss Count 2 and represents will submit a written motion and proposed form of order re: same at later time; Court grants.			

UNITED STATES DISTRICT COURT
District of New Mexico

UNITED STATES OF AMERICA
V.

DANIEL V. OLGUIN

Judgment in a Criminal Case

(For Offenses Committed On or After November 1, 1987)

Case Number: 1:16CR00462-001JB

USM Number: **85904-051**

Defense Attorney: **Michael Davis, Appointed**

THE DEFENDANT:

- ☒ pleaded guilty to count(s) **1 of Indictment**
- ☐ pleaded nolo contendere to count(s) which was accepted by the court.
- ☐ after a plea of not guilty was found guilty on count(s)

The defendant is adjudicated guilty of these offenses:

<i>Title and Section</i>	<i>Nature of Offense</i>	<i>Offense Ended</i>	<i>Count Number(s)</i>
18 U.S.C. Sec. 113(a)(6)	Assault Resulting In Serious Bodily Injury, Crime in Indian Country, 18 U.S.C. Sec. 1153	12/19/2015	1

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count .
- ☒ Count **2** is dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

August 12, 2016

Date of Imposition of Judgment

/s/ James O. Browning

Signature of Judge

Honorable James O. Browning
United States District Judge

Name and Title of Judge

September 28, 2016

Date Signed

Defendant: **DANIEL V. OLGUIN**
Case Number: **1:16CR00462-001JB**

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **37 months**.

For the reasons stated on the record at the sentencing hearing held August 12, 2016, the Court varies downward.

☒ The court makes the following recommendations to the Bureau of Prisons:
Safford Federal Correctional Institution, Safford, Arizona, if eligible

- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district:
- ☐ at on
- ☐ as notified by the United States Marshal.
- ☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
- ☐ before 2 p.m. on
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to
_____ at _____ with a Certified copy of this Judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

Defendant: **DANIEL V. OLGUIN**
Case Number: **1:16CR00462-001JB**

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **3 years**.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not unlawfully possess a controlled substance.

The defendant shall refrain from any unlawful use of a controlled substance.

The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by statute. (Check, if applicable.)
- ☐ The defendant shall register with the state, local, tribal and/or other appropriate sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☒ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Criminal Monetary Penalties sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

Defendant: **DANIEL V. OLGUIN**
Case Number: **1:16CR00462-001JB**

SPECIAL CONDITIONS OF SUPERVISION

The defendant must refrain from the use and possession of alcohol and other forms of intoxicants.

The defendant must participate in and successfully complete a community-based program which provides education and training in parenting.

The defendant must refrain from the use and possession of synthetic cannabinoids, commonly referred to as spice, or synthetic cathinones, commonly referred to as bath salts.

The defendant must participate in and successfully complete an outpatient mental health treatment program approved by the probation officer. The defendant may be required to pay a portion of the cost of this treatment as determined by the probation officer.

The defendant must reside at and complete a program at a Residential Reentry Center approved by the probation officer for a period of 6 months.

The defendant must participate in and successfully complete an outpatient substance abuse treatment program approved by the probation officer, which may include testing. The defendant is prohibited from obstructing or attempting to obstruct or tamper, in any fashion, with the collection, efficiency and accuracy of any substance abuse testing device or procedure. The defendant may be required to pay a portion of the cost of treatment and/or drug testing as determined by the Probation Office.

The defendant must not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

The defendant must submit to a search of the defendant's person, property, or automobile under the defendant's control to be conducted in a reasonable manner and at a reasonable time, for the purpose of detecting firearms and ammunition, alcohol, illegal substances and other contraband at the direction of the probation officer. The defendant must inform any residents that the premises may be subject to a search.

The Defendant must not have any unwanted direct or indirect contact or communication with the victim, or go near or enter the premises where the victim resides, is employed, attends school or treatment, without the victim's consent.

Defendant: **DANIEL V. OLGUIN**
Case Number: **1:16CR00462-001JB**

CRIMINAL MONETARY PENALTIES

The defendant must pay the following total criminal monetary penalties in accordance with the schedule of payments.

☐ The Court hereby remits the defendant's Special Penalty Assessment; the fee is waived and no payment is required.

Totals:	Assessment	Fine	Restitution
	\$100.00	\$0.00	\$0.00

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

Payment of the total fine and other criminal monetary penalties shall be due as follows:

The defendant will receive credit for all payments previously made toward any criminal monetary penalties imposed.

A ☒ In full immediately; or

B ☐ \$ immediately, balance due (see special instructions regarding payment of criminal monetary penalties).

Special instructions regarding the payment of criminal monetary penalties: Criminal monetary penalties are to be made payable by cashier's check, bank or postal money order to the U.S. District Court Clerk, 333 Lomas Blvd. NW, Albuquerque, New Mexico 87102 unless otherwise noted by the court. Payments must include defendant's name, current address, case number and type of payment.

The Court finds the Mandatory Restitution Act of 1996 is applicable in this case. However, restitution has not yet been determined. Therefore, restitution will not be imposed.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program, are to be made as directed by the court, the probation officer, or the United States attorney.

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO
3 UNITED STATES OF AMERICA,
4 Plaintiff,
5 vs. NO: 16-CR-00462-JB
6 DANIEL V. OLGUIN,
7 Defendant.

8
9 Transcript of Sentencing before The Honorable
10 James O. Browning, United States District Judge,
11 Albuquerque, Bernalillo County, New Mexico,
12 commencing on August 12, 2016.

13
14 For the Government: Ms. Niki Tapia-Brito
15 For the Defendant: Mr. Michael V. Davis
16
17
18
19
20

21 Mary Abernathy Seal, RDR, CRR, NM CCR 69
22 Bean & Associates, Inc.
23 Professional Court Reporting Service
24 201 Third Street, Northwest, Suite 1630
25 Albuquerque, New Mexico 87102

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
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MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
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FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 THE COURT: Good morning everyone. The
2 Court will call United States of America versus
3 Daniel V. Olguin, criminal matter number
4 16-CR-00462-001-JB. Counsel will enter their
5 appearances. For the government.

6 MS. TAPIA-BRITO: Good morning, Your
7 Honor. Niki Tapia-Brito on behalf of the United
8 States.

9 THE COURT: Ms. Tapia-Brito, good morning
10 to you.

11 And for the Defendant.

12 MR. DAVIS: Good morning, Judge. Michael
13 Davis on behalf of Mr. Olguin.

14 THE COURT: Mr. Davis, good morning to
15 you. Mr. Olguin, good morning to you.

16 Mr. Olguin, have you reviewed the
17 presentence report and the addendum to the
18 presentence report that probation has prepared in
19 your matter?

20 THE DEFENDANT: Yes, sir, I have, Your
21 Honor.

22 THE COURT: And Mr. Davis, have you
23 reviewed the presentence report and the addendum
24 with Mr. Olguin?

25 MR. DAVIS: I have.

1 THE COURT: I notice you had two factual
2 objections to the PSR, but they do impact the
3 guideline range for the sentencing calculated.
4 Other than those two objections, any other
5 objections, disputes with the PSR?

6 MR. DAVIS: No, Your Honor.

7 THE COURT: Here are my thoughts after
8 reviewing objections. It seemed to me that
9 probation based its two enhancements entirely upon
10 the victim's statements. Here without the victim
11 being present, not being able to assess credibility,
12 it's just a bit of a swearing match without any
13 swearing as to how to determine the truth for that.
14 I would be inclined, unless the United States wants
15 to pursue those matters, to sustain both objections,
16 find that the United States has not shown by a
17 preponderance of the evidence either one of those
18 enhancements apply, and then recalculate the
19 guideline range at the lower range.

20 Ms. Tapia-Brito, anything you want to say
21 on those two issues?

22 MS. TAPIA-BRITO: No, Your Honor, the
23 Government, in case the Court wished to hear
24 testimony, had subpoenaed one of the officers. He
25 is not present at this time. But it does seem

1 reasonable to the United States, and the United
2 States is urging the Court to accept the plea
3 agreement, and so we are fine with the Court
4 proceeding in that manner.

5 THE COURT: You want to wait until your
6 officer arrives? I started a little early. But do
7 you want to wait until he arrives and take up those
8 objections at that point?

9 MS. TAPIA-BRITO: No, Your Honor, the
10 victim is not present to testify, as you know, and
11 so we would have to rely on the officer and a few
12 photos, and to be frank with the Court, as I have
13 been with Mr. Davis, the photos which relate to the
14 allegation of the use of a knife show very little,
15 and that knife was not recovered, so the
16 Government -- the strength of the Government's
17 evidence is minimal.

18 THE COURT: All right. I assume you have
19 no problem with me handling it that way, Mr. Davis?

20 MR. DAVIS: No, sir.

21 THE COURT: All right. So I will then
22 sustain the objections to the -- let me be precise
23 here and get the exact -- the four-level enhancement
24 for holding a knife to the victim's throat. That's
25 objection number 1. And that will mean that that

1 four-level enhancement that is in paragraph 24
2 becomes zero. And then I sustained the three-level
3 enhancement for attempt to strangle. That's
4 paragraph 26. That becomes zero. So that does
5 seven.

6 Paragraph 21 -- excuse me, paragraph 30
7 becomes 21. And then the three-level enhancement --
8 or reduction for acceptance of responsibility makes
9 the offense level 18, and with a criminal history
10 category of 4, the guideline range becomes 41 to 51;
11 is that correct, Mr. Davis?

12 MR. DAVIS: That is correct, Judge. But I
13 need to note something else for the record. And I
14 just noticed, I'm sorry, Judge, paragraph 27, he
15 gets a victim-related adjustment, which we don't
16 object to, but I note that the victim-related
17 adjustment really is, they add a part of it that we
18 do object to. The first -- this is paragraph 27.
19 It says, "The victim was physically restrained in
20 the course of the offense by the Defendant sitting
21 and straddling her." We have no objection to that.

22 But we do have objection to the second
23 part of that, which is, "In addition, in a separate
24 encounter during the course of the offense, he held
25 a knife to her neck and was threatening to kill

1 her."

2 We don't have a problem with the
3 victim-related adjustment. We just have a problem
4 with that language. I'd have ask that that be
5 stricken from the presentence report.

6 THE COURT: This is paragraph 27, and so
7 just take out -- leave the first sentence in, maybe
8 just put after "her," in that first sentence, put a
9 semicolon, and put "therefore two levels are added."
10 Is that what you're trying to do, Mr. Davis?

11 MR. DAVIS: That's correct, Judge.

12 THE COURT: Any objection to that,
13 Ms. Tapia-Brito?

14 MS. TAPIA-BRITO: No, Your Honor.

15 THE COURT: So we'll make those changes as
16 well.

17 MR. DAVIS: And I only raise that, Judge,
18 because I don't know how BOP will try to classify
19 him, and that language made for that classification
20 at some point. So in an abundance of caution, I
21 thought I'd put that on the record.

22 THE COURT: All right. And
23 Ms. Tapia-Brito, does the United States move for the
24 third level of adjustment downward for acceptance of
25 responsibility?

1 MS. TAPIA-BRITO: I do, Your Honor, and
2 I'll submit the paperwork.

3 THE COURT: I assume there's no objection
4 to that, Mr. Davis?

5 MR. DAVIS: No, Judge.

6 THE COURT: All right. So I have
7 confirmed the offense level and criminal history and
8 the guideline range. However, under Rule
9 11(C)(1)(c) of the Federal Rules of Criminal
10 Procedure, the parties have presented the Court with
11 a plea agreement which includes a specific sentence
12 of 37 months. So in your remarks -- and I have
13 certainly read both the Defendant's sentencing
14 memorandum and objections as well as the United
15 States' sentencing memorandum. But any other
16 remarks you want to say to justify the variance that
17 the plea agreement calls for, Mr. Davis, if you wish
18 to speak on behalf of Mr. Olguin?

19 MR. DAVIS: Thank you, Judge, and he would
20 like to give a brief statement. But did the Court
21 receive the three letters that I submitted, I filed,
22 I think it was on Wednesday?

23 THE COURT: I did receive the letters from
24 the aunt, the sister, and then -- I guess two aunts
25 and the sister; is that the one --

1 MR. DAVIS: That's correct.

2 THE COURT: -- that came in on August 10?

3 MR. DAVIS: And I note those because he
4 has very strong family support. Judge, we ask the
5 Court to accept a 37-month agreement in the case. I
6 can tell you that Ms. Tapia-Brito and I carefully
7 negotiated this case. It was based on a variety of
8 factors. The most important thing I think that
9 factored into the case was Anne Marie Armijo's
10 position with regard to the case. As I think I
11 indicated, I actually met with her and my
12 investigator early on in the case, because I was
13 interested in knowing her position with just this
14 particular issue. And I found her to be much
15 similar to Mr. Olguin, well-educated, outgoing, very
16 approachable, understood what was going on, and she
17 was adamant that she wanted to keep the family unit
18 together, that she and Daniel both have severe
19 alcohol problems.

20 I didn't realize she was going to be
21 leaving and I haven't been able to reach her. I was
22 actually hoping to have her here for sentencing for
23 my own purposes for Mr. Olguin so she could express
24 to the Court her desire to continue to have him in
25 her life despite the fact that she feels that the

1 37-month sentence is an appropriate prison sentence
2 to provide him some punishment, because obviously,
3 his actions here go way beyond anything that would
4 be considered closely being acceptable. So there
5 was that issue.

6 I'd also note, Judge, he got hit with a
7 pretty heavy enhancement. He got a five-level
8 enhancement for the injuries to her, which kicked up
9 his guidelines considerably.

10 And then, of course, the Court should take
11 into account the fact that he's not eligible for
12 RDAP because of the nature of the offense, so there
13 won't be any reduction in his offense based on his
14 participation in treatment, although he -- and he'll
15 address this when he talks to you, Judge -- he wants
16 to have the treatment desperately.

17 He's got considerable family support. I
18 think the letter from both his aunts kind of sets
19 forth his family. He's got a very extended family.

20 Just my brief thoughts on Mr. Olguin,
21 because I have met with him several times. I have
22 been struck with him -- over the years I have
23 represented a lot of individuals from the
24 reservation, various reservations, and it was hard
25 to read the reports and try to see the man that was

1 next to me when I was talking to him, because he
2 seems very, very nice; he's been very respectful to
3 me; he's never once blamed anybody else for his
4 situation. He knows he has a drinking problem. He
5 knows he's to be punished.

6 And one of the things that I think
7 Ms. Tapia-Brito and I were impressed by, early on in
8 the case, we had negotiated a plea, Judge, fairly
9 quickly in the case. So that was kind of beyond us.
10 It was simply a matter of the dispositional phase,
11 and working with Mr. Olguin regarding his alcohol
12 problems, just kind of counseling him, because I
13 dealt with lots of alcoholics in my life.

14 But I'm going to turn it over to him and I
15 think he has some things he'd like to tell the
16 Court.

17 So go ahead.

18 THE DEFENDANT: Your Honor, I just want to
19 start by saying that I want to apologize to the
20 victim for emotional and physical pain and
21 suffering, to her family, to my family, to our
22 children, and to everybody that is involved in the
23 case, including defense, prosecution, yourself, and
24 the investigators for having to put some sort of
25 effort into something that I did because of my

1 actions. And I know I disappointed a lot of people,
2 especially my family and her family, and most of all
3 the trust between us. And time -- it's going to
4 take a lot of time to heal that between everybody,
5 and I would like to use that time to better myself,
6 to get some domestic relations education and see how
7 things like this can be avoided just based on anger.

8 And when you put alcohol into such things,
9 it's hard to avoid because I was going through a
10 lot. Just a brief summary of what I was going
11 through in my life at the time. I had been in a
12 six-month inpatient treatment program and during
13 that time, my mother passed away when I was close to
14 the end of completing the program. And I came home
15 and, you know, I found out a lot of things. She was
16 being unfaithful. And I forgave it all, and we
17 tried to work past it. And five days back in
18 treatment after I buried my mom, she was with
19 someone else again. And again, I don't -- I'm not
20 trying to place blame on anybody or take the blame
21 away from myself, but it was really devastating to
22 me to know that the person that supported me the
23 most in my time of need when my mother had just
24 passed away -- that she was out with somebody else.
25 And my mental state of mind wasn't stable because of

1 that, and we did our best to work past it.

2 And I did some counseling before I came
3 home, and I came home and we -- we were doing good.
4 We were both working, and had a good job, our kids
5 were happy, and when the alcohol abuse started
6 again, that's when everything started to come out.
7 It was kind of like chipping a piece of paint. It
8 kept eating away at me and eating away at me, and
9 when I bottled it up is when it all happened.

10 And I apologize enormously to everybody,
11 to everybody involved in this, because my life right
12 now in its current state of inertia is just -- it's
13 overwhelming, because I don't -- I don't have any
14 control over my life for the next period of so many
15 years until I can -- until I can get my relationship
16 back with my family and mend everything between her
17 family and our children, our friends.

18 And I want my life back. And I know
19 that's going to take some time to fix, and it's
20 going to take some effort. But it's something to
21 work for. It's not completely gone. It's never too
22 late. And I just want to get some counseling and
23 use my time to better myself along the way.

24 THE COURT: Thank you, Mr. Olguin. Do you
25 have any assets? I noticed you had a checking

1 account without any sort of balance next to it. Do
2 you have any assets?

3 THE DEFENDANT: No, I don't have any
4 assets, Your Honor.

5 THE COURT: Okay. All right.
6 Anything else, Mr. Davis?

7 MR. DAVIS: No, Judge.

8 THE COURT: All right. Thank you,
9 Mr. Olguin, Mr. Davis.

10 Ms. Tapia-Brito?

11 MS. TAPIA-BRITO: Thank you, Your Honor.
12 Mr. Davis is correct that we have carefully crafted
13 this plea agreement based on the nature of the
14 evidence that we had and the injuries in this
15 particular case, our discussions with the victim in
16 this case.

17 This was a very serious matter. I think
18 this particular couple has been struggling both with
19 alcohol addiction and they have had an ongoing
20 relationship that has involved domestic violence for
21 a long time. It has become the norm for them, and
22 it's clear from the criminal history and judgments
23 in the past that Mr. Olguin has been sent to anger
24 management, he's been sent to domestic violence
25 counseling. It's been something that the tribe has

1 been trying to address and I think that the parties,
2 the victim, the Defendant, have been trying to
3 address. But the alcohol is a significant issue
4 here.

5 The victim in this case, Judge -- we have
6 consulted with her and she maintains contact with
7 our victim advocate, even while she's in treatment
8 out-of-state. She felt that this plea agreement was
9 fair. I think she was alarmed by the level of
10 violence that occurred in this particular instance.
11 You know, she did have to seek medical treatment.
12 She was, I think, surprised by how out of control
13 things became.

14 All in all, Your Honor, when I look at
15 this case and at any case, I recognize that she
16 wanted to seek treatment early and that there was a
17 great possibility that she would be unavailable come
18 trial. And I looked at the substantive evidence
19 that we would be able to present in court, and I
20 drafted both my indictment and the plea agreement
21 based on what we believed we could substantiate.
22 When she sought treatment in this particular case,
23 unfortunately, she did not discuss strangulation,
24 she did not discuss the use of a knife. There was
25 no substantive evidence to support those allegations

1 from a previous incident the day prior to the matter
2 the Defendant has pled to.

3 So I think that the plea agreement is a
4 fair bargain. Both parties are not 100 percent
5 satisfied with what they have received, but this
6 provides an opportunity for the victim to continue
7 in her treatment; it provides punishment and
8 deterrence for Mr. Olguin himself. He, I think at
9 this point in time, has an opportunity to take
10 treatment seriously and as far as contact with the
11 victim, we have had different sorts of information
12 as to whether or not she wishes to maintain a
13 relationship with Mr. Olguin and whether or not she
14 wants contact. That changes at times. Early when
15 we were negotiating the plea agreement, she did, in
16 fact, want contact and she did, in fact, state that
17 she wanted to see her family together, she wanted
18 to, you know, have her children have a relationship
19 with their father. So I would just ask that with
20 regard to contact, that that be no unwanted contact
21 and that probation help make that determination as
22 to whether or not it's appropriate. So I just urge
23 the Court to accept the plea agreement at this time.

24 THE COURT: On the incidents in the past
25 between Mr. Olguin and the victim, were there ever

1 any instances of domestic violence that didn't
2 involve alcohol?

3 MS. TAPIA-BRITO: No, sir.

4 THE COURT: All right. All right.
5 Anything else, Ms. Tapia-Brito?

6 MS. TAPIA-BRITO: No, Your Honor.

7 THE COURT: Thank you, Ms. Tapia-Brito.

8 All right, I'll now state the sentence,
9 but the attorneys will have the final chance to make
10 legal objections before sentence is imposed.

11 The Court adopts the presentence report
12 factual findings. The Court has sustained two
13 objections that were both factual and related to the
14 sentencing guideline application. So with those
15 changes that the Court has sustained, the Court will
16 adopt the PSR factual findings as its own.

17 The Court has also considered the
18 sentencing guideline applications, and again after
19 sustaining two and really three -- one is factual --
20 the Court will adopt those applications as its own.

21 The Court has also considered the factors
22 set forth in 18 U.S.C. section 3553(a) 1 through 7,
23 and I'll discuss those in more detail in a moment.

24 As I indicated a moment ago, the offense
25 level is 18 and the criminal history category is 5,

1 establishing a guideline imprisonment range of 41 to
2 51 months. However, under Rule 11(C)(1)(c) of the
3 Federal Rules of Criminal Procedure, the Court
4 accepts the plea agreement, which includes a
5 specific sentence of 37 months, as the Court is
6 satisfied that the agreed sentence is justified.

7 The Defendant assaulted Jane Doe over the
8 course of two days. He restricted her from leaving
9 her -- well, it made some changes to that. But in
10 any case, she was injured during the assault.

11 The Court has, as I think this record will
12 reflect, carefully considered the guidelines but in
13 arriving at its sentence the Court has taken into
14 account not only the guidelines but other sentencing
15 goals. Specifically, the Court has considered the
16 guideline sentencing range established for the
17 applicable category of offense committed by the
18 applicable category of defendant.

19 After careful consideration of the PSR and
20 also the briefing of the two parties as well as
21 letters from family members and arguments here in
22 court today, the Court concludes that the punishment
23 that's set forth in the guidelines is not
24 appropriate for this sort of offense. I then have
25 considered the kinds of sentence and range

1 established by the guidelines and the Court agrees
2 with the parties that a sentence of 37 months is
3 adequate but also necessary to reflect the
4 seriousness of the offense, promote respect for the
5 law, provide just punishment, afford adequate
6 deterrence both at a specific and general level,
7 protect the public. I realize it is a variance from
8 the guideline range, but I think the parties have
9 justified it, so I think it avoids unwarranted
10 sentencing disparities among defendants with similar
11 records who have been found guilty of similar
12 conduct.

13 And because the Defendant will be placed
14 on supervised release, I think the sentence fully
15 and effectively provides the Defendant with some
16 needed education and training and care to help him
17 overcome the problems that have led us to this
18 point. In sum, I think the parties have presented
19 the Court with a sentence that fully and effectively
20 reflects each of the factors embodied in 18 U.S.C.
21 section 3553(a). The Court believes the proposed
22 sentence is reasonable and that the sentence is
23 sufficient without being greater than is necessary
24 to comply with the purposes of punishment set forth
25 in the Sentencing Reform Act.

1 Therefore, as to Count 1 of indictment
2 1:16-CR-00462-001-JB, the Defendant, Daniel V.
3 Olguin, is committed to the custody of the Bureau of
4 Prisons for a term of 37 months. The Defendant is
5 placed on supervised release for a term of three
6 years. The Defendant must comply with the standard
7 conditions of supervision and follow the mandatory
8 conditions.

9 First, the Defendant must cooperate in the
10 collection of DNA as directed by statute.

11 Second, the Defendant must participate in
12 an approved program for domestic violence
13 prevention.

14 The following special conditions will also
15 be imposed. I'm going to state three of them, and
16 then I'll get the justification for those. First,
17 the Defendant must participate in and successfully
18 complete an outpatient substance abuse treatment
19 program approved by the probation officer, which may
20 include testing. The Defendant is prohibited from
21 obstructing or attempting to obstruct or tamper in
22 any fashion with the collection, efficiency, and
23 accuracy of any substance abuse testing device or
24 procedure. The Defendant may be required to pay a
25 portion of the cost of treatment and/or drug testing

1 as determined by the probation office.

2 Second, the Defendant must refrain from
3 the use and possession of alcohol and other forms of
4 intoxicants.

5 And then third, the Defendant must refrain
6 from the use and possession of synthetic
7 cannabinoids, commonly referred to as spice or
8 synthetic cathinones, commonly referred to as bath
9 salts. These three conditions are imposed because
10 of the Defendant's extensive history of abusing
11 alcohol, prescription opiates, and marijuana.

12 I'm going to state two more conditions and
13 then I'll give the justification for those. First,
14 the Defendant must not possess a firearm,
15 ammunition, destructive device, or any other
16 dangerous weapon.

17 And second, the Defendant must submit to a
18 search of the Defendant's person, property, or
19 automobile under the Defendant's control, to be
20 conducted in a reasonable manner at a reasonable
21 time for the purpose of detecting firearms and
22 ammunition, alcohol, illegal substances, and other
23 contraband at the direction of the probation
24 officer. The Defendant must inform any residents
25 that the premises may be subject to a search.

1 These two conditions are imposed because
2 of the Defendant's status as a convicted felon, his
3 history of abusing substances, and past conduct
4 involving domestic violence.

5 Next, the Defendant must reside at and
6 complete a program at a residential reentry center
7 approved by the probation officer for a period of
8 six months. This condition is imposed to assist the
9 Defendant in reintegrating back into society and
10 securing a suitable residence.

11 And then finally, the Defendant must not
12 have any direct or indirect contact or communication
13 with the victim or go near or enter the premises
14 where the victim resides, is employed, attends
15 school or treatment without prior approval of the
16 probation officer. And this concern is imposed for
17 the safety of the victim.

18 Next, the Defendant must participate in
19 and successfully complete an outpatient mental
20 health treatment program approved by the probation
21 officer. The Defendant may be required to pay a
22 portion of the cost of this treatment as determined
23 by the probation officer, and this condition is
24 imposed because of the Defendant's mental health
25 issues and because of the Defendant's prior violent

1 history and assaultive behavior towards women.

2 And then finally, the Defendant must
3 participate in and successfully complete a
4 community-based program which provides education and
5 training in parenting. And this condition is
6 imposed because the Defendant has one child and
7 three other stepchildren whom he considers as his
8 own. The Defendant would benefit from training and
9 parenting to help him learn patience and to prevent
10 any abusive conduct toward the children.

11 The Court finds the Mandatory Restitution
12 Act of 1996 is applicable in this case. Restitution
13 has -- nothing has been submitted, so the Court will
14 not order restitution.

15 Based on the Defendant's lack of financial
16 resources, the Court will not impose a fine. The
17 Court also considered alternative sanctions such as
18 community service, location monitoring, halfway
19 house. I have imposed a halfway house, so I think
20 the total combined sanction without a fine or other
21 alternative is sufficiently punitive.

22 The Defendant will pay a special
23 assessment of \$100 which is due immediately.

24 Let me ask both counsel if they know of
25 any reason why this sentence should not be imposed

1 as the Court has stated it. Ms. Tapia-Brito?

2 MS. TAPIA-BRITO: No, Your Honor.

3 THE COURT: Mr. Davis?

4 MR. DAVIS: Judge, two things I'll ask the
5 Court to address. First off, I forgot to ask the
6 Court to make a judicial recommendation to Safford,
7 Arizona. If the Court can make that recommendation,
8 I think it's probably the closest facility that he
9 may be eligible for.

10 THE COURT: Ms. C de Baca, is that an
11 appropriate facility for Mr. Olguin?

12 PROBATION OFFICER: Yes, Your Honor.
13 However, BOP will make the final determination.

14 THE COURT: Any objection to making that
15 recommendation?

16 MS. TAPIA-BRITO: No, Your Honor.

17 THE COURT: All right. I'll include that
18 recommendation.

19 Mr. Olguin, I can't tell the Bureau of
20 Prisons where to incarcerate you. That's up to
21 them. But they are pretty good about following our
22 recommendations for New Mexico residents over at
23 Safford, so I'm optimistic. I can't guarantee it.
24 You understand that?

25 THE DEFENDANT: Thank you, Your Honor. I

1 understand it.

2 MR. DAVIS: Judge, the other thing was
3 with your condition; I believe it was number 8, that
4 he not have any direct or indirect contact with
5 Ms. Romero without prior approval of the probation
6 office; I think that's probably a standard condition
7 in cases such as this, and ordinarily I wouldn't
8 make any objection, but I'd ask the Court to
9 consider the fact that they do have a child
10 together. I think there has been some communication
11 at least through family members regarding their
12 children, because he's basically raised those
13 stepchildren as his. He's like their daddy. So I'd
14 ask the Court to -- I'm not sure how I want to
15 explain to Mr. Olguin, but I guess at some point Ms.
16 Romero is going to have to contact probation and
17 explain to them that she still wants to have contact
18 with him. Is that what the Court would anticipate
19 happening?

20 THE COURT: Yeah. I mean, I do this
21 different ways. Sometimes I just put a flat period
22 after treatment, and just say, "We're not going to
23 leave it to probation."

24 On the other hand, I'm always available to
25 resolve any disputes. I guess one of the things

1 that Ms. Tapia-Brito suggested was the Defendant
2 must not have any unwanted direct or indirect
3 contact or communication. I could add that word,
4 but then that could be subject to a dispute. So I
5 left it the way that probation recommended it, which
6 is: Can't have any contact without prior approval
7 of the probation officer. What are your thoughts?

8 MR. DAVIS: Well, Judge, I would be
9 inclined to ask the Court to consider
10 Ms. Tapia-Brito's recommendation. That would be
11 unwanted contact. If there appears to be a problem,
12 I think that can be addressed with the probation
13 office. Because Ms. Romero would, I guess, complain
14 at some point about the contact or the nature of the
15 contact. I assume that the probation officer will
16 be contacting her regarding this particular
17 condition. So she'd be made aware of the fact that
18 she's got control over the extent and nature of the
19 contact that they have, and I can assure the Court,
20 based on my meeting with her, she's a well-educated,
21 strong woman. I didn't get any sense at all that
22 she's making these decisions anything but
23 independently of Mr. Olguin's concerns. So any
24 sense that there may be some overreaching, I can
25 tell you that my contact with her has not shown that

1 whatsoever.

2 THE COURT: Any objection to putting that
3 word in there, Ms. Tapia-Brito?

4 MS. TAPIA-BRITO: No, Your Honor. And we
5 have provided her with probation's information and
6 have provided probation with the contact that we
7 have as far as reaching her. So I think it's
8 sufficient.

9 MR. DAVIS: And other than that, I have
10 got nothing else.

11 THE COURT: What if we did this? Because
12 now the sentence doesn't make a whole lot of sense.
13 To go back to something I sometimes do, we just put
14 a period after "treatment." So "without prior
15 approval" doesn't make a lot of sense if we add
16 "unwanted." So "The Defendant must not have any
17 unwanted direct or indirect contact, communication
18 with the victim, or go near or enter the premises
19 where the victim resides, is employed, attends
20 school or treatment." Just put a period there.
21 What do you think about that?

22 MR. DAVIS: That's fine, Judge.

23 THE COURT: Does that work for you?

24 MS. TAPIA-BRITO: That's fine, Your Honor.

25 THE COURT: Ms. C de Baca, what do you

1 think about that? Does that work for probation?

2 PROBATION OFFICER: Yes, Your Honor. We
3 can go ahead -- and I just think the only other
4 alternative would be to have it worded as you had
5 mentioned, that there's no direct or indirect
6 contact and at that time if the victim decides that
7 she does want to have contact with Mr. Olguin, the
8 probation officer can come to the court and modify
9 that condition, if that's what you want to do, as
10 well.

11 THE COURT: I'm not sure I'm improving the
12 structure of this sentence, because "must not have
13 any unwanted direct or indirect contact,
14 communication." Maybe I should leave -- how about
15 after -- I put a comma after "treatment," "without
16 the victim's consent." I think that way, the
17 sentence makes sense. And then I'm available if
18 that doesn't work or probation can't sort that out
19 between the couple, then we can come back and relook
20 at that. Does that work for you, Mr. Davis?

21 MR. DAVIS: Yes Your Honor.

22 THE COURT: Ms. Tapia-Brito?

23 MS. TAPIA-BRITO: Yes, Your Honor.

24 THE COURT: So you got that change?

25 PROBATION OFFICER: Yes, Your Honor.

1 THE COURT: We'll put "unwanted," take out
2 "without prior approval of the probation officer,"
3 but after "treatment" put a comma "without the
4 victim's consent." Anything else, Mr. Davis?

5 MR. DAVIS: No, Judge.

6 THE COURT: All right. It is ordered the
7 sentence is imposed as the Court has stated it.

8 Mr. Olguin, you can appeal your conviction
9 if you believe that your guilty plea was somehow
10 unlawful or involuntary, if there's some other
11 fundamental defect in the proceedings that was not
12 waived by your guilty plea.

13 You also have a statutory right to appeal
14 your sentence under certain circumstances,
15 particularly if you think the sentence is contrary
16 to law. However, a defendant may waive those rights
17 as part of the plea agreement, and you have entered
18 into a plea agreement which waives some or all of
19 your rights to appeal the conviction, and any
20 sentence imposed in conformity with the Rule
21 11(C)(1)(c) agreement, which this one was, so you
22 have effectively waived your right to appeal the
23 sentence itself. Such waivers are generally
24 enforceable, but if you believe for any reason that
25 your waiver is unenforceable, you can present that

1 theory to the appellate court.

2 You have the right to apply for leave to
3 appeal in forma pauperis. What that means, the
4 clerk of the court will prepare and file a notice of
5 appeal upon your request, if you're unable to pay
6 the cost of an appeal. With very few exceptions,
7 any notice of appeal must be filed within 14 days of
8 the entry of judgment.

9 Mr. Olguin, understanding that pursuant to
10 the plea agreement you have waived the right to
11 appeal the conviction, and any sentence that was
12 imposed in conformity with the Rule 11(C)(1)(c) plea
13 agreement, which this one was, you have effectively
14 waived the right to appeal the final sentence
15 imposed by this court under 18 U.S.C. section
16 3742(a). Do you understand generally your rights to
17 appeal?

18 THE DEFENDANT: Yes, I do, Your Honor.

19 THE COURT: All right. Counsel, you have
20 copies of the presentence report and the addendum.
21 Anything further on this matter? You need to
22 dismiss the indictment?

23 MS. TAPIA-BRITO: Yes, Your Honor, and I
24 will submit the forms for that.

25 THE COURT: I assume there's no objection

1 to that, Mr. Davis?

2 MS. TAPIA-BRITO: I need to dismiss Count
3 2.

4 THE COURT: Just Count 2?

5 MS. TAPIA-BRITO: Yes, sir.

6 MR. DAVIS: No objection, Judge.

7 THE COURT: Anything else,
8 Ms. Tapia-Brito?

9 MS. TAPIA-BRITO: No, Your Honor.

10 THE COURT: Mr. Davis?

11 MR. DAVIS: No, Your Honor.

12 THE COURT: Counsel, I appreciate your
13 assistance on this matter.

14 Mr. Olguin, you know, you got a lot of
15 things to work on. I really encourage you, as I
16 look through your criminal history, and it did seem
17 to me that this alcohol was the primary problem. I
18 mean, the reason you're going to prison is because
19 of hitting your domestic partner. That's the reason
20 you're going to prison, but the real underlying
21 problem here is this alcohol. I think you're really
22 going to have to take some stock of yourself over
23 the next six years as to whether you're a person
24 that really can drink at all.

25 THE DEFENDANT: I agree, Your Honor.

1 THE COURT: Because some guys, they drink
2 and they go over in a corner and they're quiet for
3 the rest of the evening. And some people get
4 cranked up and do what you do. And so I think
5 you're going to have to probably make an assessment
6 that you're going to have to get it out of your
7 life, and that's going to be hard to do. It's
8 easier for everybody to tell you to do it. It's
9 another thing to do it. But anyway, over the next
10 six years, you're going to have to be without it,
11 and I hope that you'll sort of make a resolution
12 that you're going to get it out of your -- just out
13 of your life, or otherwise I'm afraid this could be
14 a revolving door, and your criminal history is
15 pretty high. You know, in three years you're going
16 to be back out in the public, and you're going to be
17 under my supervised release, and you know, if you
18 stumble or fall or don't do what probation says,
19 you'll be right back in front of me. And I sit here
20 day after day and have a lot of men kind of
21 revolving in and out. I don't think that's where
22 you want to be.

23 So really work on that. And when you do
24 get out, make sure you do exactly what probation
25 says, so you don't end up being back in front of me

1 and undoing all the hard work everybody did to put a
2 sentence together today that works. Good luck to
3 you, Mr. Olguin.

4 THE DEFENDANT: Thank you, Your Honor.

5 THE COURT: Good luck to your family, as
6 well.

7 MR. DAVIS: Thank you, Judge.

8 Also thank you, Ms. Tapia-Brito.

9 MS. TAPIA-BRITO: Thank you, Your Honor.

10 THE COURT: Thank you.

11 (Court was in recess.)
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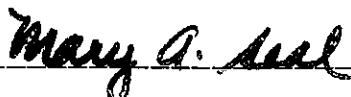
1 UNITED STATES OF AMERICA

2 STATE OF NEW MEXICO

3
4 REPORTER'S CERTIFICATE

5 I, Mary Abernathy Seal, RDR, CRR, CCR, do
6 hereby certify that the foregoing pages constitute a
7 true transcript of proceedings had before the said
8 Court held in the City of Albuquerque, New Mexico,
9 in the matter therein stated.

10 In testimony whereof, I have hereunto set my
11 hand on this 18th day of January, 2018.

12
13 

14 Mary Abernathy Seal, RDR, CRR, CCR
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17 License expires: 12/31/18

18 Date taken: August 12, 2016
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MICHAEL V. DAVIS
ATTORNEY & COUNSELOR AT LAW, P.C.

January 11, 2018

Honorable James O. Browning
United States District Court Judge
Pete V. Domenici U.S. Courthouse
333 Lomas Boulevard, N.W., Suite 640
Albuquerque, New Mexico 87102

Re: United States of America v. Daniel V. Olguin
U.S.D.C. No. 1:16-CR-00462 JB

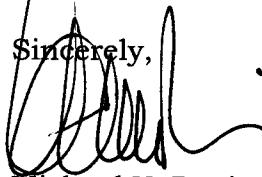
Dear Judge Browning:

This is to advise you that I am in receipt of the letter prepared by my former client, Daniel Olguin, and filed in the above referenced cause on November 2, 2017. (Attached hereto) Since he wrote this letter, Mr. Olguin has contacted my office on two occasions and I have spoken with him both times.

In my most recent conversation with him last week, I explained to him that I had received my file from closed files, reviewed it carefully, and determined that his sentence was consistent with what we had argued at sentencing and that he simply had a misunderstanding about the concurrent versus consecutive issue regarding his state and federal sentences.

Nonetheless, he continues to persist that my memory of the events is mistaken and that the Court clearly imposed a federal sentence concurrent with his state case. None of my notes in my file, nor my current recollection demonstrate that he is correct in his position. Nonetheless, in abundance of caution, I will contact Ms. Bean to get a copy of the sentencing transcript in this matter so I can make sure that Mr. Olguin's issue was properly raised. If the Court wishes me to do something else in this matter, please do not hesitate to contact me.

Sincerely,



Michael V. Davis

MVD/sav

RECEIVED 1/19/18

To. Honorable Judge- James O. Browning

Dear your Honor,

I Daniel V. Olguin am Writing in regards to case # 16-CR-00462 in which I was sentenced by yourself. Sentence 37 months in which 22 months have been served, however the Judgement and commitment in my possession does not state that this case is to be run concurrent with my state case, which you granted on the day of sentencing. I am requesting a copy of my judgement and commitment that clearly states so, in order to be credited my time of incarceration, or an amended version for B.O.P files to receive credit. I have since served the full term of my state sentence and paroled back into federal custody in which I have received 0 days - months credit time served, also B.O.P has not credited me any time served from being in federal holding CCA, my computation sheet states 1 month 8 days total credit time served. So your Honor as you can see there has been enormous error in calculation of time, so with this being said I am requesting the said documentation. Please mail to Address below where I am currently incarcerated

Thank you

Sincerely, Daniel Olguin

United States Penitentiary Tucson

Inmate #85904051

Post office Box 24550

11/5/17

Tucson, Arizona 85734

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Case 1:16-cr-00462-JB Document 38 Filed 11/02/17 Pa

Inmate Name: James O Browning

6203 2122320128

Register Number: #85904051

United States Penitentiary Tucson

Post Office Box 24550

Tucson, Arizona 85734

85904-051

Honorable Judge

James O Browning
333 Lomas Blvd NW
Albuquerque, NM 87102
United States

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ALBUQUERQUE NM 870

11 JAN 2018 PM 2 L

Honorable James O. Browning
United States District Court Judge
Pete V. Domenici U.S. District Courthouse
333 Lomas Boulevard, N.W., Suite 170
Albuquerque, New Mexico 87102

87102-220445

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